Tri-County Roofing, Inc. and Ace Roofing & Sheet Metal, Inc. *and* David Suda

Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL–CIO *and* David Suda. Cases 4–CA–17967, 4–CB–5809, 4–CB–5876, and 4–CB–6038

August 31, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 8, 1992, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent Union and the Respondent Employer each filed exceptions and supporting briefs. The General Counsel filed a brief in support of the judge's decision, cross-exceptions and a supporting brief, and an answering brief to the Respondent's exceptions. The Respondent Union filed a brief in opposition to the General Counsel's cross-exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.

1. As part of his recommended remedy for the Respondent Union's unlawful hiring hall practices, the judge recommended that the Local 30 and Local 30B hiring halls be operated in a nondiscriminatory manner based on written objective criteria and standards. We agree. To that end we will order that the Respondent Union select and refer qualified applicants for employment without discrimination against the applicants by reason of membership or nonmembership in the Union or any of its components or Locals, or on the basis of union activity. In addition, we will order that any and all membership distinctions in referrals to roofing employment within the jurisdiction of Locals 30 and 30B be prohibited: membership in one division, section, or part of the Union shall not be a bar to employment in any division, section, or part of the Union or industry.

The judge also recommended that the work-referral lists of Local 30 and Local 30B under contracts with Roofing and Sheet Metal Contractors Association of Philadelphia & Vicinity, and Roofing, Metal and Heating Associates, Inc. be merged and only one list be maintained for all applicants seeking referral. We do not adopt the judge's merger recommendation. As the judge himself observed, ''the maintenance of a system providing for two distinct rates of remuneration . . . has served useful purposes.'' Since the same objective sought by the merger, i.e., the nondiscriminatory referral of qualified individuals, can be accomplished without a remedy so intrusive as that of ordering a merger of the lists we will not require such a merger here. We also note that the judge who heard and decided the RICO case (see fn. 1, supra), which was based in large part on the same evidence before us, did not order a merger of the hiring hall lists.

2. The General Counsel has excepted to the judge's failure to include in the proposed class of individuals potentially entitled to backpay those individuals who worked under the Local 30B/RMHA contract and paid ''field'' dues but who did not become full members of Local 30B (''helpers''). The judge held that the record did not prove that the Local 30B helpers would have been ''entitled'' to seek job referrals from the Local 30 hiring hall even had the Respondent Union not discriminated against its Local 30B members.[2] The General Counsel excepts that the only proper test is whether the helpers were qualified for referral. According to the General Counsel, if a helper could meet the requirements set out by the judge for referral to Local 30 jobs, then the helper should not be categorically excluded because he or she was not a journeyman or not a member of Local 30B. As noted by the General Counsel, the helpers are encompassed within the complaint allegations as those persons denied referrals because of their ''membership status.'' According to the General Counsel's argument, the helpers are analogous to the Local 30B members in that both have been denied referrals because of their lack of membership in Local 30. We find merit to the General Counsel's exception. Accordingly, if, at the compliance phase of this proceeding, it is determined that a helper meets

[1] The Respondent Union and the Respondent Employer have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent Union has excepted to the judge's use of the term ''apprentice program'' to describe the Local 30B training program. We find merit to the Respondent Union's exception, but this does not change the result in this case. Although the Local 30B training program (as we shall term the ''apprentice program'') was not as rigorous as the Local 30 apprentice program, it nonetheless was still a formal, several-years-long school program aimed at providing commercial training and experience to Local 30B members. This training and the 5000 hours of roofing experience as set out by the judge are suitable criteria for qualification for Local 30 referrals and backpay.

The judge inadvertently refers to ''Rise Roofing'' in the backpay portion of his decision rather than ''Rys Roofing.''

We also acknowledge the existence of and our review of the civil RICO case involving Local 30. *U.S. v. Roofers Local 30*, 686 F.Supp. 1139 (E.D.Pa.1988), affd. 871 F.2d 401 (3d Cir. 1989), cert. denied 110 S.Ct. 363 (1989). We find that the RICO case and the decision of Judge Louis Bechtle do not preclude our decision here but in fact bolster the need for our Order and notice.

[2] We do not understand the judge to have made a definitive finding that all helpers were unqualified for commercial work.

the criteria for referral to commercial roofing work set forth by the judge, then that individual is part of the class entitled to backpay. The Order and Notice have been modified accordingly.

3. The General Counsel has also excepted to the judge's failure to order that the newly promulgated formal hiring hall criteria and standards be mailed to members of Local 30 in addition to Local 30B members. We find merit to the General Counsel's exception. In ordering the mailing to Local 30B members, the judge stated that he was concerned that the Union's hiring hall discrimination against its Local 30B members had ''become so institutionalized that special steps were needed to make it clear to those members that things had changed.'' We also think it necessary to apprise the Local 30 members individually of the changes in the long-established hiring hall policies in order to minimize any future problems. Accordingly, to alleviate any potential misunderstanding among members of Local 30 and Local 30B about the new hiring hall rules, and in the interest of full notice and disclosure, we will order that our Notice to Members, which includes the new hiring hall criteria and standards, be mailed to all members of Local 30 and Local 30B.

4. The Respondent Employer excepts to the judge's determination that it is jointly and severally liable with the Respondent Union for its unlawful termination of employee David Suda. The general rule is that an employer and union are jointly and severally liable for backpay where the employer and the union have violated Section 8(a)(3) and (1) and Section 8(b)(1)(A) and (2) of the Act, respectively. *International Harvester Co.*, 270 NLRB 1342 (1984); *Acme Mattress Co.*, 91 NLRB 1010 (1950), enfd. 192 F.2d 524 (7th Cir. 1951). Despite this, the Respondent Employer, citing *Roofing, Metal & Heating Associates*, 304 NLRB 155 (1991), contends that at most it should be held only secondarily liable, with the Respondent Union being held primarily liable. We do not agree and find *Roofing, Metal & Heating Associates* distinguishable. *Roofing, Metal & Heating Associates* was an unusual case because the employer (the Fund and the RMHA) had turned de facto control of the hiring and retention of its training instructors over to the union. The union then ordered the discharge of an instructor because the instructor was going to seek the union business manager's job. The employer expressed displeasure at the union's directive and only reluctantly acceded to the union's demand. As a result, the union was found primarily liable, the employer secondarily.

That is a far different situation from the present case. Here, the Respondent Union did not control the Respondent Employer's hiring or retention of employees. The Respondent Union did not contact or apply direct pressure to the Respondent Employer regarding Suda's discharge. Instead the Respondent Employer, based on Suda's advising it of the Respondent Union's trial board action, discharged Suda. As found by the judge, the Respondent Employer terminated Suda in order to avoid a perceived conflict with the Union and it knew, or had reason to know, that the Respondent Union's demand that Suda leave its employ did not have a legitimate basis. The Respondent Employer had other options but it, nevertheless, chose to lay off Suda. Under these circumstances, the Respondent Employer is clearly as culpable as the Respondent Union and thus is jointly and severally liable with the Respondent Union. *Wolf Trap Foundation*, 287 NLRB 1040 (1988).

ORDER

The National Labor Relations Board orders that the Respondent Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL–CIO, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Informing employee-members of Local 30B that, because they are members of the Local 30B side of the Union, they are not permitted to seek job referrals from any of the Union's exclusive hiring halls.

(b) Discriminatorily failing to refer any employee-member of Local 30B to jobs available through the Union's exclusive hiring halls.

(c) Assaulting any employee-member of Local 30B because the employee is seeking a job referral from a hiring hall operated by the Union.

(d) Imposing a fine on any employee-member of Local 30B in circumstances in which the imposition of such fine coerces and restrains the member in respect to seeking job referrals through exclusive hiring halls operated by the Union.

(e) Causing the termination of the employment of any employee-member of Local 30B with any employer because that employee-member is not a member of the Local 30 side of the Union.

(f) Unless its exclusive hiring halls are being operated nondiscriminatorily in respect to employee-members of Local 30B, causing the termination of any such member by any employer because the member obtained employment other than through a hiring hall operated by the Union.

(g) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Maintain and operate its exclusive hiring halls in a nondiscriminatory manner based on written objective criteria and standards.

(b) Post the criteria and standards required in paragraph (a) in all exclusive hiring halls operated by the Union and mail a copy of the criteria and standards to every employee-member of Local 30 and Local 30B.

(c) Provide copies of the criteria and standards required in paragraph (a) to the Regional Director and to the chief court liaison officer appointed pursuant to the decree of the United States District Court for the Eastern District of Pennsylvania in Civil Action No. 87-7718.

(d) Select and refer applicants for employment without discrimination against the applicants by reason of membership or nonmembership in the Union or any of its components or Locals, or on the basis of union activity. Any and all distinctions in referrals to roofing employment within the jurisdiction of Locals 30 and 30B based on divisional membership are prohibited. Membership in one division, section, or part of the Union may not be a bar to employment in any division, section, or part of the Union or industry.

(e) Place hiring hall referral lists in conspicuous places within the exclusive hiring halls operated by the Union so as to provide for easy access and inspection by all applicants seeking job referrals.

(f) Make David Suda and other employee-members of Local 30B and helpers whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner, and in respect to the persons, set forth in sections XIII(C) and XIV(A) of the judge's decision and as set forth in this decision.

(g) Maintain, for 2 years, written records of its referrals from every hiring hall operated by the Union, including information sufficient to disclose the basis of each referral, and make the records available to the Regional Director and to the chief court liaison officer for examination and copying upon the request of either.

(h) Submit quarterly reports to the Regional Director, with copies to the chief court liaison officer, concerning referrals of employee-members of Local 30B and helpers to employers that are members of the Roofing and Sheet Metal Contractors Association of Philadelphia & Vicinity in the manner set forth in section XIII(B) of the judge's decision.

(i) Preserve and, on request, make available to the Board or its agents for examination and copying, all hiring hall records, membership lists, and all other records necessary to determine the amounts due under the terms of this Order.

(j) Post in each of its hiring halls copies of the attached notice marked ''Appendix A.''[3] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Union's representative, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Mail a copy of Appendix A to every member of Local 30B and Local 30.

(l) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondents Ace Roofing & Sheet Metal, Inc. and Tri-County Roofing, Inc., Philadelphia, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating the employment of any employee-member of the Local 30B side of Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL–CIO, because of a demand by Local 30 that the employee leave such employment, in circumstances in which the Respondents Ace and Tri-County know, or have reason to know, that the demand has no legitimate basis.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer David Suda immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and, jointly and severally with Local 30, make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in section XIV(A) of the judge's decision.

(b) Remove from its files any reference to the unlawful termination of Suda's employment and notify Suda that this has been done and that the termination will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities copies of the attached notice marked ''Appendix B.''[4] Copies of the notice, on

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[4] See fn. 3.

forms provided by the Regional Director for Region 4, after being signed by the representatives of Ace and Tri-County, shall be posted by Ace and Tri-County immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell members of the Local 30B side of our Union that they are not permitted to seek job referrals from any exclusive hiring hall that we operate.

WE WILL NOT discriminatorily keep any member of Local 30B from using any exclusive hiring hall that we operate.

WE WILL NOT assault any member of Local 30B because the member is seeking a job referral from a hiring hall that we operate.

WE WILL NOT impose fines on members of Local 30B in circumstances in which the imposition of the fines coerces and restrains such members in respect to seeking job referrals through exclusive hiring halls that we operate.

WE WILL NOT force any member of Local 30B to leave a job because that member is not a member of Local 30. Unless we are operating the Local 30 hiring halls in a way that does not discriminate against Local 30B members, WE WILL NOT force any member of Local 30B to leave a job because that member got the job without going through one of our hiring halls.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain and operate our Local 30 hiring halls in a nondiscriminatory manner based on written objective criteria and standards.

WE WILL post these criteria and standards in all Local 30 and Local 30B hiring halls and mail a copy of such criteria and standards to every employee-member of Local 30 and Local 30B.

WE WILL select and refer applicants for employment without discrimination against those applicants by reason of membership or nonmembership in the Union or any of its components or Locals, or on the basis of union activity. Any and all distinctions in referrals to roofing employment within the jurisdiction of Locals 30 and 30B based on divisional membership are prohibited. Membership in one division, section, or part of the Union is not a bar to employment in any division, section, or part of the Union or industry.

WE WILL place hiring hall referral lists in conspicuous places within the Local 30 and Local 30B hiring halls for easy access and inspection by all applicants seeking job referrals.

WE WILL make David Suda and the following other members of Local 30B and helpers whole for any loss of earnings and other benefits, with interest, that they may have suffered since September 20, 1988, as a result of the discriminatory way we operated the Local 30 hiring halls—

Any member of Local 30B or any helper having, at the time of the claimed loss:

At least 5000 hours of roofing experience and who graduated from the Local 30B training program; or

A total of at least 5000 hours of roofing experience with one or more of the following companies:

Delta Roofing
McGarvey & Sons
McMullen Roofing
Reilley Roofing
R. J. Associates
Rys Roofing Company
U.S. Roofing/J.M. Contractors
Wolfe Roofing & Sheetmetal, Inc.
Any member of the RSMCA

Any other employer that does mostly commercial roofing work; or

At least 5000 hours of commercial roofing experience.

WE WILL, jointly and severally with Ace Roofing & Sheet Metal, Inc. and Tri-County Roofing, Inc., make David Suda whole, with interest, for any loss of earnings and other benefits that he suffered as a result of the termination of employment.

WE WILL maintain written records of referrals from all of our hiring halls for 2 years, with those records containing information sufficient to disclose the basis of each referral.

WE WILL submit quarterly reports to the Regional Director and to the chief court liaison officer concerning referrals of employee-members of Local 30B and helpers to employers that are members of the Roofing

and Sheet Metal Contractors Association of Philadelphia & Vicinity.

LOCAL 30, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, AFL–CIO

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate the employment of any member of Local 30B, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL–CIO, because of a demand by Local 30 that the employee leave such employ, in circumstances in which we know, or have reason to know, that such demand lacks a legitimate basis.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer David Suda immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and, WE WILL jointly and severally with Local 30, make him whole, with interest, for any loss of earnings and other benefits suffered as a result of our discrimination against him.

WE WILL remove from our files any reference to the unlawful termination of David Suda and WE WILL notify Suda that this has been done and that the termination will not be used against him in any way.

ACE ROOFING & SHEET METAL, INC.
AND TRI-COUNTY ROOFING, INC.

Carmen P. Cialino Jr. and *Peter Verrochi, Esqs*., for the General Counsel.
Richard B. Sigmond and *Thomas Kohn, Esqs. (Sagot, Jennings & Sigmond)*, of Philadelphia, Pennsylvania, for Respondent Roofers Local 30.
David W. Wolf, Esq., of Philadelphia, Pennsylvania, for Respondents Tri-County Roofing, Inc. and Ace Roofing & Sheet Metal, Inc.

DECISION

STATEMENT OF THE CASE

STEPHEN J. GROSS, Administrative Law Judge. The General Counsel's allegations concerning the Respondent Union center around what the General Counsel contends is the unlawful way the Union operates its hiring halls. As for Ace Roofing and Tri-County, the General Counsel alleges that they are alter egos of one another, that the Union unlawfully demanded that an employee of Ace/Tri-County, David Suda, leave the employ of that Company, and that Ace/Tri-County, in response, unlawfully fired Suda.

This proceeding began with unfair labor practice charges filed by David Suda on March 20, 1989. Suda thereafter filed additional charges and amended charges. On January 23, 1991, a consolidated complaint issued in Cases 4–CB–5809 and 4–CB–5876. Then on February 28 another consolidated complaint issued, in Cases 4–CB–5809, 4–CB–5876, and 4–CB–6308 and in 4–CA–17967. The Respondent Union, Ace and Tri-County admit that the Board has jurisdiction over this matter, that the Respondent Union is a labor organization, and that Ace and Tri-County are employers engaged in commerce. Ace and Tri-County further admit that they are alter egos of one another. But the Respondents deny that they have violated the National Labor Relations Act (the Act) in any respect.

The case went to hearing in Philadelphia on various dates between April and September 1991. The General Counsel and the Respondent Union have filed briefs as have, jointly, Ace and Tri-County. The case stands ready for decision.

For the reasons I discuss below, my conclusion is that the facts of record prove that the Respondents violated the Act in the ways and to the extent alleged by the General Counsel.

FINDINGS OF FACT

I. INTRODUCTION

A. *Local 30 and Local 30B*

An initial peculiarity is that we must first sort out whether we are dealing with two unions, or just with one.

In 1968, at a time when the entity Local 30 was already in existence, the Roofers Union International granted a charter to ''Local 30B.'' Since then employees interested in joining a roofers union in the Locals 30/30B jurisdictional area (which is centered in Philadelphia[1]) must choose between Local 30 and Local 30B. There is one membership roll for Local 30 (with about 1200 members) and another for Local 30B (between 300 and 400 members).[2] Dues are different. Moreover various employers, including one employers' association, have entered into collective-bargaining agreements with Local 30B while, contemporaneously, another employers' association and other employers have contracted with ''Local 30.'' And employers that have contracts with Local 30B make fringe benefit payments into funds different from the funds that the Local 30 employers pay into.

On the other hand: (1) there is just one set of officers for Local 30 and 30B; (2) those officers are elected in combined Locals 30/30B elections (the ballots of the 30B members are

[1] That area includes Reading and Allentown, Pennsylvania; Wilmington and New Castle, Delaware; Atlantic City and Cape May, New Jersey; and surrounding counties.

[2] Numerous employees who are not members of Local 30B nonetheless have ''field dues'' deducted from their pay while they engage in work within the jurisdiction of Local 30B for employers who have a contractual relationship with Local 30B.

counted together with those of the Local 30 members to get one combined total); (3) one executive board governs Locals 30 and 30B; (4) there is just one constitution and one set of bylaws for Locals 30 and 30B; (5) the Locals 30 and 30B business agents are the same, so that any one business agent is likely to handle both Local 30 and Local 30B matters; (6) Locals 30 and 30B file one financial statement (LM-2) with the Department of Labor; (7) Locals 30 and 30B have one set of hiring hall rules (labeled ''30/30B''); and (8) the Union's trial boards (designated ''Local 30/30B'' trial boards) have jurisdiction over the members of both Local 30 and Local 30B.

I conclude that, for the purposes of the Act, Locals 30 and 30B constitute one labor organization.

Throughout the remainder of this decision: the terms ''Union'' and ''Local 30/30B'' means the Respondent Union—the combined Locals 30 and 30B. ''Local 30'' refers to that one ''side'' of the Union (in the members' terminology) and ''Local 30B,'' or just ''30B,'' refers to the other side.

B. *The Union's Hiring Halls*

The Union's main hiring halls are in Philadelphia. But the Union operates hiring halls in various other cities and towns within the Union's geographic jurisdiction, such as in Trenton, New Jersey, and in Kutztown, Pennsylvania.

The Union treats each of its hiring halls as though it is two halls, one for use by the Union's Local 30 members, and one for its 30B members. In Philadelphia, in fact, the Union does operate one hiring hall for its Local 30 members and a physically distinct hiring hall for its 30B members.

All of the hiring halls used by the Union's Local 30 members are exclusive hiring halls by virtue of the collective-bargaining agreement between the Union and an association of employers called the Roofing & Sheet Metal Contractors Association of Philadelphia and Vicinity (RSMCA). That is, the employer-members of the RSMCA are obligated by their agreement with the Union to hire roofing employees only through the hiring halls operated by the Local 30 side of the Union, and the Union forbids its members (whether 30 or 30B) to attempt to obtain employment with RSMCA members except through the Local 30 hiring halls.

That the Local 30 hiring halls are exclusive hiring halls is clear not only from the Union's agreement with the RSMCA agreement, but also from: the Union's hiring hall rules; a trial board decision that is part of the record in this proceeding; and the testimony of various witnesses.

As for the 30B halls, for many years until November 1989 the Union was a party to collective-bargaining agreements with another group of employers, the Roofing, Metal & Heating Associates (RMHA), which collective-bargaining agreements also provided for the operation by the Union of exclusive hiring halls. The name the Union went by when executing those agreements with the RMHA was the ''Residential Reroofing Union, Local 30B.''

Notwithstanding contract language and hiring hall rules by which the 30B halls were purportedly exclusive hiring halls, employees routinely sought employment with members of the RMHA by applying directly with such employers, and members of the RMHA routinely hired employees without using the 30B hiring halls. But nothing in this proceeding turns on the Union's 30B halls being exclusive hiring halls.

What is relevant about the 30B halls is that the pay scale of jobs obtainable via the 30B halls is, and always has been, substantially lower than the pay scale of jobs obtainable through the Local 30 halls. (For example, as of January 1987, 30B journeyman wages were $14.25 per hour, while Local 30 wages were $20.27—more than 40-percent higher.[3])

II. THE UNION'S POLICY OF REFUSING TO REFER 30B EMPLOYEES TO LOCAL 30 JOBS

It is the Union's policy that Local 30B members may not seek employment through the Local 30 side of its hiring halls. Union officers were notably straight-forward about this in their testimony.

Consider, for example, this exchange between counsel for the General Counsel and Union Vice President Jack Conway:

> Q. It is true, is it not, to your knowledge, that . . . Local 30B members have never been referred out of the Local 30 hiring hall?
>
> A. Not to my knowledge, never. . . .
>
> Q. To your knowledge, then, from March 1968 [when 30B came into existence], members of Local 30B have not been referred out [of] Local 30 hiring halls?
>
> A. Never to my knowledge. . . .
>
> Q. As a general matter, Mr. Conway, it is true, is it not, that people using the 30B side of the hiring hall know that they are not supposed to use the Local 30 side of the hiring hall?
>
> A. Yes.

Further, the record is clear that the Union's sole basis for refusing to let 30B members use the Local 30 hiring halls is their membership in 30B rather than Local 30. The Union treats as beside the point the 30B members' qualifications for the kinds of jobs available through the Local 30 hiring halls. No matter how well qualified, 30B members are not permitted to seek work through the Local 30 halls. In fact, there is no mechanism by which 30B members may demonstrate their qualifications for Local 30 work. (Some of the evidence in these regards will be further considered in sections VI and IX, infra.)

Lack of membership in a favored union is not an appropriate basis for refusing access to an exclusive hiring hall. Rather, a union's operation of an exclusive hiring hall in that manner violates Section 8(b)(1)(A) and (2) of the Act. E.g., *Teamsters Local 293 (Beverages Distributors)*, 302 NLRB 403 (1991); *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898 (1985); *Plumbers Local 198 (Jacobs/Wiese)*, 268 NLRB 1312 (1984); see *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 6 (1989); *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961).

Nor may a union operate a hiring hall in a way that favors one faction of its members over another. Again, such behavior constitutes a violation of Section 8(b)(1)(A) and (2). *Teamsters Local 293*, supra; *Toledo World Terminals*, 289 NLRB 670 (1988).

[3] These figures exclude fringe benefits. Local 30's fringe benefits are comparably higher than 30B's.

The General Counsel's prima facie case thus is obvious. Indeed, the Union's message to the 30B members that they are not permitted to use the Local 30 hiring halls is in itself a violation of Section 8(b)(1)(A). *Longshoreman Local 1423 (Savannah Maritime)*, 306 NLRB 942 (1992); *Q.V.L. Construction*, 260 NLRB 1096 (1982).

As its defense to the General Counsel's contention that the Union has prevented 30B members from using the Local 30 halls, the Union relies chiefly on the argument that most of the 30B members are not qualified for the kinds of jobs available through the Local 30 hiring halls.

But this is not a mixed-motive case. As just indicated, membership in Local 30B has been the sole reason that the Union will not refer 30B members to jobs out of the Local 30 halls. That being so, the Union violates the Act any time it refuses a 30B member access to Local 30 job referrals, even if the 30B member is not qualified for Local 30-type jobs. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

Moreover the Union agrees that some 30B members are qualified for the kinds of jobs obtainable via the Local 30 hiring halls. Here is Vice President Conway again:

> Q. You don't think 30B men are qualified to do Local 30 work?
>
> A. Some might be. I would say a few are.

And throughout the hearing, and on brief, the Union's counsel made the same point: some small percentage of 30B members are qualified for the jobs available through the Local 30 hiring halls.

Let us assume, therefore, that the Union could lawfully deny 30B members access to the Local 30 halls if no member of 30B were qualified for Local 30 work—notwithstanding the fact that the qualifications of the 30B members are not the reason for the Union's denials of access. Even then, and based entirely on undisputed facts, the Union's refusal to permit 30B members, as a class, to use the Local 30 halls would constitute a violation of the Act. The Union, after all, points to no theory that would permit it to refuse all 30B members access to the Local 30 halls on the ground that most of the 30B members are not qualified for Local 30 work.

For purposes of determining whether the Union violated the Act, that is to say, it matters not at all how large a proportion of the 30B membership is qualified to perform the kinds of work available through Local 30 halls or, indeed, whether any 30B members are qualified for that work. As will be discussed in later in this decision, however, the nature of the remedy to be ordered arguably hinges on the extent to which 30B members are qualified for commercial work. In the following part of this decision, therefore, I consider the job requirements of the journeyman commercial roofer, the qualifications of the 30B members, and how the 30B members' qualifications stack up against the qualifications of the members of Local 30.

III. TO WHAT EXTENT ARE 30B MEMBERS QUALIFIED FOR THE KINDS OF JOBS AVAILABLE OUT OF THE UNION'S LOCAL 30 HIRING HALLS

A. *Commercial Roofing Work*

As touched on earlier, the Local 30 hiring halls are exclusive hiring halls by reason of Local 30's collective-bargaining agreements with the RSMCA. For the purposes of this proceeding we can assume that the business of the RSMCA's members is entirely the installation of flat commercial roofs and, to a much lesser extent, waterproofing.

Some of these terms require definition:

> ''Commercial'' roof: Any roof other than a ''residential'' roof. A residential roof is a roof on a single family home. A commercial roof is a roof on virtually any other kind of building—factory, store, multi-family apartment house or condominium, office building, church, school, warehouse, and so on.
>
> ''Flat'' roof: Any roof that is relatively horizontal. (Technically, any roof ''with a vertical rise or fall of less than three inches per horizontal run of one foot.''[4])
>
> ''Waterproofing'': Anything, apart from roofing, having to do with the watertight integrity of a building. The floors of bathrooms, for example, or the below-grade walls of a building may require waterproofing.

Many hundreds of pages of the transcript and exhibits in this proceeding are devoted to describing commercial roofs and the tasks involved in installing them. But for the purposes of this decision all that need be said is this: Installing commercial roofs is difficult, exacting work because, among other things: (1) a commercial roof can cover acres of surface, sloping in different directions toward many different drains, and with many projections (vents, stacks, air-conditioning equipment, etc.) to account for—yet, like any roof, even the tiniest error in its installation is likely to result in a leak; (2) roofs many stories above the ground, as commercial roofs often are, sometime require special techniques for bringing equipment and materials to the roof and removing discarded materials from the roof; and (3) the purchasers of commercial roofs inevitably demand multiyear warranties from the manufacturer of the roofing material (Carlisle, Firestone, Johns Manville, or Owens-Corning, for example). To protect itself, the roofing manufacturer, in turn, requires that the roofing contractor (that is, the employer to whom the Union's hiring halls refer employees) wholly comply with vast numbers of installation specifications, and the manufacturer often inspects the roof meticulously to insure that every one of those specifications has been met.

Adding to the complications of commercial roof work is the fact that there are several broad categories of roofing material, each of which requires very different installation techniques. (For example one category—''built-up'' roofing—calls for putting down layers of hot asphalt; another uses a single ply of unheated rubber-like material.) Expertise associated with one category does not necessarily mean expertise

[4] Per union witness Donnarumma.

with another category. Beyond that, within any given category there are numerous variations. Yet many commercial roofing contractors hold themselves out as able to install virtually any type of roof the customer chooses.

Ideally, a journeyman commercial roofer ought to be an expert at all of the many tasks associated with installing each of the various types of commercial roofs. That includes expertise in operating all of the various types of machinery needed to install a commercial roof.

Ideally speaking, again, a journeyman commercial roofer also ought to be expert at the somewhat different tasks involved in waterproofing.

Finally, a journeyman commercial roofer should be able to work fast without allowing the need for speed to reduce the quality of his work.

It takes a typical worker anywhere from 4 to 6 years of experience working on commercial roofs to become a fully qualified journeyman commercial roofer. Schooling—as in apprenticeship training—helps, but is not necessary.

B. *Residential Roofing Work*

The employers' association with which Local 30B contracted, it may be recalled, is the RMHA. (The RMHA is not to be confused with the RSMCA, which is the employer association that contracts with Local 30.) To the extent that RMHA members use hiring halls to obtain employees, they use the 30B halls. Many of the RMHA members do only residential roofing, not commercial roofing. Accordingly, some of Local 30B's members are experienced only, or primarily, in residential roofing work. (What the record tells us about how many of the 30B members are qualified for commercial roofing work, and how many only for residential work, will be considered in subsection D, infra.)

Residential roof work involves both shingling (on steeply sloping roofs) and flat roof work although, in the geographic area over which the Union has jurisdiction, most residences have flat roofs.

Residential flat roof work requires less skill than does commercial work. For one thing, many fewer types of roofing materials are used on residential roofs than on commercial roofs. Second, for a variety of reasons residential roofs are inherently less complicated to install than are commercial roofs. Third, the equipment used on residential roofs tends to be easier to learn how to operate than the equipment used in installing commercial roofs. Fourth, manufacturers of roofing material generally do not give warranties covering residential roofs. Thus residential roofing contractors do not have to concern themselves with manufacturers' inspections and the related need to comply with every one of a manufacturer's sometimes idiosyncratic installation specifications.

Additionally, some not inconsequential number of residential roofing contractors, knowing that their customers are likely to be unsophisticated in roofing matters, keep their costs low by cutting every corner imaginable. Roofers working for such companies gain little experience useful for commercial work.

C. *The Qualifications of Local 30's Members*

With the exception of those few apprentices who choose to become members of the Union, the Union deems all of its Local 30 members to be journeyman commercial roofers. But in respect to most Local 30 members, the record tells us very little about what standards the Union applied in determining that they had journeyman qualifications and thus were acceptable as members.

Some Local 30 members attained that status via Local 30's apprenticeship program. I will assume that all of the roofers who followed this route are in fact fully qualified journeyman commercial roofers. But only a small percentage of Local 30's 1200 members are in that category.

In December 1988, the Union began applying a standard whereby a roofer must have 5000 hours of commercial roofing experience in order to be admitted to Local 30 membership.[5] But relatively few of the current members of Local 30 have become members since December 1988.

At least some Local 30 journeymen attained their journeyman status this way: The roofer worked for one or more RSMCA members as a helper; then, after some period of years, one of the roofer's supervisors proposed to the Union that the roofer be designated a journeyman. But the record is silent about how many of the Local 30 journeymen attained that status this way. And the record is similarly silent about how the Union decided whether to accept a given supervisor's recommendation that a roofer be accepted as a journeyman.

Some members of Local 30 obtained their membership even though they had no roofing skills or experience whatever. As one longtime member of Local 30 testified: ''There's guys in Local 30 that came right out of the door and started getting . . . journeyman's money that never had a day's lick of roofing.'' That testimony is undenied.[6]

Did any of the members of Local 30 qualify under some other set of criteria? The record doesn't say. In fact the Union's president testified that, apart from the apprenticeship route and the 5000-hour standard, ''I don't know what happened, really,'' in respect to how roofers became Local 30 journeymen.

There is another kind of evidence in the record about the qualifications of Local 30's members: the testimony of roofing contractors who employ members of Local 30. That testimony shows that:

1. Many members of Local 30 do possess the skills, knowledge, and experience needed for full qualification as journeyman commercial roofers. But some undetermined number of the members of Local 30 in this category have not changed employers in years and thus hardly ever have occasion to use the Local 30 hiring halls.

2. Some substantial number of members of Local 30 are qualified in many, but not all, respects. For example, a roofer in this group might be expert at built-up roofing but not single-ply roofing (or vice versa) and/or might not know how

[5] The evidence about the 5000-hour standard is shaky. In fact it is susceptible to the conclusion that the standard is a fraudulent, after-the-fact, fabrication. At best: (1) the Union's executive board adopted the 5000-hour standard with the expectation that it would not be implemented until approved by the Union's membership; (2) the membership was never given an opportunity to vote on it; and (3) the Union's leadership implemented the standard anyway. As indicated above, I have decided to proceed on the basis of the interpretation most favorable to the Union.

[6] The testimony was by witness Michael Sullivan, who on several counts has reason to consider himself an enemy of the incumbent officers of Local 30 and an ally of Suda, the Charging Party. I nonetheless consider Sullivan's testimony to be credible.

to operate some of the more specialized commercial roofing equipment.

3. Some members of Local 30 do not consistently produce competent work or, if they do, they do not consistently work fast enough to meet the needs of roofing contractors.

4. Some members of Local 30 are not competent roofers.

What that testimony does not tell us, even roughly, is what percentage of the Local 30 membership falls into each of these categories.

D. *The Qualifications as Commercial Roofers of Local 30B's Members*

As noted earlier and as will be further discussed below, many members of the RMHA (the employers association with which Local 30B contracted) perform only residential roofing. Thus the likelihood is that at least some of Local 30B's members are experienced only, or primarily, in residential roofing work. I do not consider such roofers to be qualified for most kinds of jobs available through the Local 30 halls. The questions to be considered here are how many 30B members have commercial roofing experience and, of those 30B members with commercial experience, to what extent are they qualified journeyman commercial roofers.

The record contains four kinds of evidence in these respects: testimony of officials of six roofing contractors that routinely employ 30B members on commercial roofing work (and RMHA records showing the total hours that such contractors employed 30B members); evidence concerning the nature of the now defunct 30B apprenticeship program; testimony concerning the extent to which RMHA members, as a group, handle commercial work; evidence concerning the occasional use of 30B members by contractors that ordinarily use only members of Local 30; and testimony of roofing contractors concerning the qualifications as commercial roofers of 30B members.

Turning first to the testimony of officials of roofing contractors that routinely employ 30B members, a half-dozen testified about the nature of their work during the period relevant to this proceeding. One (Donnelly) testified that 50 percent of the work of his company that was performed by 30B members work was residential, the rest commercial. The other such witnesses testified that virtually all of the work of their 30B employees was on commercial roofs (ranging from 90 percent in two cases to more than 98 percent in two others).

The testimony of those six roofing contractors, together with various statistics of record, show that, together, those six companies employed the equivalent of more than 100 members of Local 30B per year on commercial roof work each year between 1987 and 1990.[7] And those companies are by no means the only roofing contractors that extensively employ 30B roofers on commercial roofing work.[8]

It is clear from the testimony of the officers of those companies, moreover, that the kinds of commercial work performed by such 30B employees was comparable—in terms of types of roofs and their complexities—to the work performed by members of Local 30.

As for the evidence relating to the 30B apprenticeship program, it shows that that program was aimed almost entirely at producing commercial roofers.

As for the evidence about the work of RMHA members as a group, one roofing contractor who had been a director of the RMHA stated, in the course of cross-examination by the Union's counsel, that the ''overwhelming majority'' of the roofing contractors that had a contract relationship with Local 30B handled residential roofing work exclusively. I credit that testimony. But the record is clear that roofing contractors that do only residential work tend to be very small businesses with few employees, and that the members of the RMHA that do commercial work exclusively, or nearly exclusively, are the largest members of that association. Thus more relevant would be the hours worked by 30B members on commercial roofs compared to total hours worked by 30B members.

The executive director of the RMHA, Joseph Spitzer, testified about that relationship. He estimated that more 60 percent of 30B hours were performed on commercial roofs. I credit that testimony, although I recognize that inherent in it is a significant margin of error. I thus find that more than half of the roofing hours worked by the Union's 30B members were spent on commercial work. (The Union objected to Spitzer's testimony in that regard. But, as discussed at the hearing, the issue is not whether the correct figure for commercial 30B hours relative to total 30B hours is 60 percent or, say, 57 percent. All that is needed here is a rough approximation. And Spitzer was a credible witness with decades-long employment by the RMHA in a capacity that kept him in frequent communication with the association's member companies. Moreover Spitzer's testimony squares with considerable other evidence about the large amount of commercial work being done by 30B members.[9] And the Union presented no evidence that rebuts the accuracy of Spitzer's testimony. I note also that Spitzer's 60-percent testimony is comparable in nature to the ''overwhelming majority'' testimony elicited by the Union concerning the proportion of 30B roofing contractors that perform only residential work, which testimony I also have credited. I further note that my conclusions about the Union's violations of the Act and the remedies that such violations warrant would be the same whether commercial work constituted only one-fourth of all 30B work—surely too low a figure—or more than half.)

It is also noteworthy that at least some RSMCA members that perform commercial roofing work exclusively and whose

[7] The record provides information on the 30B industry fund contributions that those companies made during those years. Those figures yield the approximate number of hours those companies employed 30B roofers. And other data in the record show that, on the average, roofers work about 1000 hours per year. To get roofer man-years, I applied the percentage figures referred to above (to get commercial hours) to the total yearly 30B hours of the six companies, and then divided by 1000.

[8] According to the credible testimony of witness McGarvey, commercial roofing constitutes ''a large majority'' of the business of the following RMHA roofing contractors: McMullen Roofing, Reilley Roofing, Rise Roofing, and Delta Roofing. McGarvey's list did not purport to be a complete catalog of RMHA companies that install mostly commercial roofing.

[9] For example, when counsel for the General Counsel asked Suda to estimate ''what percentage of the time . . . during your career under Local 30B contract . . . was spent on commercial flat roofs and what percentage on residential single-family flat roofs,'' Suda responded: ''I would say the commercial roofing was 70%.'' That estimate, in turn, was consistent with Suda's lengthy testimony about his work for numerous named roofing contractors.

work force generally is made up entirely of members of Local 30 will from time to time employ 30B members. Very occasionally such 30B employment is for shingling work (a task that Local 30 members are not qualified to handle). But much more frequently such 30B work is on typical commercial roofs. (The use of 30B roofers by RSMCA members is further discussed in section IV, infra.)

Using Spitzer's 60-percent figure for the moment, does that mean that all 30B members spend 60 percent of their time on commercial work? Or that 60 percent of 30B's members spend all of their time on commercial work while the other 40 percent of 30B members perform only residential roofing? Or is some combination of the two the case? Clearly the third alternative is the correct one. But the record does not permit a breakdown beyond that. Nonetheless, it is evident that a substantial percentage of the Union's 30B members have considerable commercial roofing experience. Still, the question that remains is what is the range of competency at commercial roofing work of the 30B members as a group.

A witness who had recently been employed by a large roofing contractor that permanently employs both Local 30 crews and 30B crews testified that the contractor's 30B crews were not as productive as its best Local 30 crews but better than its worst Local 30 crews. Thus the 30B crews ''rated somewhere in the middle of the pack.''[10]

The head of an RMHA roofing contractor that permanently employs 30B members and that occasionally uses Local 30 roofers obtained from the Local 30 hiring halls credibly testified that its 30B employees are far superior (as commercial roofers) to the Local 30 employees it employed. (One must be cautious when generalizing from such testimony. As a roofing contractor hits slack periods, its management tends to keep the best employees and lay off the rest. After several cycles, the contractor ought to have assembled a very superior group of employees for its permanent staff. Thus an RSMCA roofing contractor that permanently employs members of Local 30 and that occasionally uses 30B roofers obtained from the 30B hiring halls testified that the 30B roofers were unsatisfactory employees. Still, the experience of that RMHA company makes plain that some 30B members are far more qualified as commercial roofers than the run-of-the-mill member of Local 30.)

All of the evidence about the qualifications of 30B members as commercial roofers points in this same direction. As is the case with the members of Local 30: some 30B members are exceedingly well qualified commercial roofers; some are only partially qualified; some are not competent commercial roofers; and the record does not tell us what percentage of the 30B membership falls into each of these categories. It is evident, nonetheless, that some substantial number of 30B members are competent commercial roofers.

I referred earlier to waterproofing work. The RSMCA's members do perform waterproofing. Concomitantly, a fully qualified member of Local 30 ought to be familiar with waterproofing. Thus the subject is taught, albeit briefly, in the Local 30 apprentice program. Local 30B's members apparently only rarely do any waterproofing work. But as touched on earlier, waterproofing amounts to only a small percentage of the RSMCA's work, and the record compels the conclusion that inexperience at waterproofing work does not render an otherwise qualified employee unqualified to seek referrals from Local 30 hiring halls.

[10] General Counsel's witness Ober.

IV. A NOTE ON THE NATURE OF THE UNION'S DEFENSE

Throughout the hearing, and then again on brief, the Union urged that what is involved here is, on the one hand, a union of commercial roofing specialists (Local 30) and, on the other, one of residential roofers (30B). True, because of information gained in the course of the hearing (so a Union representative said), the Union now recognizes that there are a few 30B members who are qualified to work on commercial roofs. But apart from those few exceptions, the Union contends, the Local 30/commercial versus Local 30B/-residential dichotomy remains.

But even ignoring the testimony about 60 percent of the 30B hours being on commercial roofs, the uncontroverted testimony of contractors that were parties to the RMHA-30B contract (and related statistics) shows that a substantial proportion of the work of RMHA members and, therefore, 30B members, is commercial roofing work.

Additionally, the Union's leadership had to have known of the nature of the now defunct 30B apprenticeship program. And that program was directed almost exclusively at teaching commercial roofing techniques.

But let us ignore even those kinds of evidence and consider just this:

In the mid-1980's the then head of Local 30, Business Manager Steve Traitz Jr., called the members of the RMHA (that is, the employers who employ 30B members) to a meeting. In that meeting Traitz invited those contractors to be aggressive in competing for *commercial* roofing contracts being bid on by nonunion contractors.

About the same time (January 1986), Traitz called a meeting of the RSMCA members. As an official of the RSMCA testified, ''the essence'' of Traitz' speech to the RSMCA members ''was to encourage Local 30 contractors to start 30B operations to begin to compete against non-union competition in the outlying areas of the Union's territory.'' In other words, if, because of nonunion competition, an RSMCA member needed lower labor costs to win a commercial roofing contract, the company could, with the Union's blessing, employ 30B roofers at 30B wage rates. Out of that speech grew an elaborate system—still in place—whereby members of the RSMCA apply to the Union for the right to use 30B members on commercial roofing work (always at 30B rates) where nonunion competition may preclude the employment of members of Local 30 (at Local 30 wage rates). As a result, it is altogether routine for RSMCA roofing contractors to employ 30B members whom they obtain via 30B hiring halls.

We thus have a situation in which the Union's leadership has, for years, followed a policy of urging both RSMCA members and RMHA members to employ members of Local 30B on commercial work whenever competitive circumstances preclude the use of members of Local 30 and in which, on a day-in-day-out basis, the Union's officers act pursuant to the system that was created to implement such policy.

In the very least these circumstances call into question the authenticity of the astonishment that the Union voiced at the hearing about the news that some 30B members are competent commercial roofers.

More importantly they further demonstrate that the Union's refusal to permit any 30B members to use the Local 30 hiring halls has little if anything to do with various justifications put forth by Union representatives during the course of this proceeding—justifications like the contention that 30B members should not be referred out to commercial jobs because such 30B members, being inexperienced at commercial work, would be a danger to themselves and those working with them.

V. THE EFFECT ON THE LOCAL 30B MEMBERS OF THE UNION'S DISCRIMINATION AGAINST THEM

Local 30B member David Suda applied for job referral from a Local 30 hall in June 1989. As far the record here indicates, that was the only time any 30B member ever applied for a referral from a Local 30 hall even though, as already discussed: Local 30 jobs pay substantially more than do 30B jobs; and the likelihood is that many 30B members are qualified for Local 30 work.

The question is why only one 30B member has been willing to take that step.

The most obvious answer is that, as discussed earlier, the Union has made it known that 30B members are not permitted to use the Local 30 halls. And, indeed, I conclude that, prima facie, 30B members qualified for Local 30 work would have applied for work at the Local 30 halls had the Union not communicated the message that the Local 30 halls were off-limits to 30B members.

The Union argues, in response, that the only 30B members who are qualified as commercial roofers already have good jobs (albeit at 30B pay rates) as members of the permanent staffs of roofing contractors. The reason they have not used the Local 30 hiring halls, this argument continues, is that they prefer their present positions. But the argument is spurious for two reasons. The first is that it is wholly speculative. It would have been a simple matter for the Union to have called some of those 30B members to the witness stand in order to determine whether the hypothesis was accurate. The Union chose not to do that. The second is that, as the discussion in section III shows, I do not agree with the Union that the only 30B roofers qualified to do commercial work are those on the permanent staffs of roofing contractors.

I need go no further to conclude, as I do, that it has been the Union's discrimination that has caused the 30B members not to seek work through the Local 30 hiring halls.

But there are two sets of facts not yet discussed that are worth some attention in this respect.

One has to do with Suda's entry in the Philadelphia Local 30 hall in June 1989. As will be discussed in the next part of this decision, that effort on Suda's part resulted in his being told that in no event would he be referred out of the Local 30 hall, being cursed at and otherwise verbally attacked, getting punched, and getting pushed out of the hall. It is altogether unlikely that that episode went unnoticed among the 30B membership, and it alone would explain the absence of 30B members in the Local 30 hiring halls since June 1989.

The second set of facts are those set out in a decision by District Judge Louis C. Bechtle in a civil RICO action against Local 30 and 13 individuals, all of whom were either officers or employees of Local 30. *U.S. v. Roofers Local 30*, 686 F.Supp. 1139 (E.D.Pa.1988), affd. 871 F.2d 401 (3d Cir. 1989), cert. denied 110 S.Ct. 363 (1989).[11]

Judge Bechtle found that on numerous occasions in the 20-year period 1968 through 1987, members of Local 30, or persons operating on their behalf:

> - firebombed and otherwise violently destroyed the property of roofing contractors who, for one reason or another, had disagreements with the Union. On one occasion the destruction was effected via the massed efforts of about 1,000 men.
>
> - savagely beat individuals associated with such companies (sometimes their owners, sometimes their employees), on occasion with rocks, clubs, axes, and/or monkey wrenches. The injuries resulting from such beatings included broken facial bones, broken ribs, punctured eardrums, and permanent neurological damage.
>
> - threatened disfavored roofing contractors and employees with death and/or grave physical injury and with destruction of their property.

The Union's membership often made it clear that it supported these methods of persuasion. For instance:

> - the Union paid for and installed a plaque at the Union hall that honored eleven members convicted of destroying a non-union contractor's property.
>
> - when union members were convicted and imprisoned for some of the above activities, the Union made payments to them and/or their families during their periods of incarceration.
>
> - the Union's membership voted to allow some of the union's business agents accused of such conduct to keep their union-supplied automobiles ''if trial goes against them.''

Based on the facts outlined above, along with many others spelled out in his decision, Judge Bechtle found that—

> many members of the Union as well as many contractors and subcontractors . . . fear attending meetings at the Union Hall. Their fear is that if they go to the Union Hall to resolve a dispute or problem or to negotiate a contract they will be outnumbered, intimidated, threatened with physical violence and/or physically beaten.
>
> The court finds that such fear is actual, legitimate, and well-founded.
>
> Such fear stems from, *inter alia*, (1) the undemocratic and brutal policies and practices of the former officers of the Union; (2) the perception that at least some

[11] I thus am giving collateral estoppel effect to Judge Bechtle's decision. At the hearing I asked for the parties' views about the appropriate use to be made of that decision. The General Counsel noted that the Union opted to include Judge Bechtle's decree in the record in this proceeding as U. Exh. 1, which decree specifies that it was entered in accordance with ''the court's Findings of Fact and Conclusions of Law.'' And the General Counsel's brief assumes that I may rely on Judge Bechtle's findings. But otherwise the parties did not respond to my inquiry.

> of the former officers are still running the Union;[12] (3) the failure of the newly elected officials and appointed business agents to repudiate the physically violent and otherwise coercive policies and practices of the Union's corrupt former officers; and (4) in some cases, the permanent physical and mental scars of outnumbered persons who suffered physical beatings at the hands of hired goons and trained boxers at the Union Hall.

None of the violence described by Judge Bechtle stemmed from hiring hall incidents. But recall Judge Bechtle's finding that—

> many members of the Union . . . fear . . . that if they go to the Union Hall to resolve a dispute or problem . . . they will be outnumbered, intimidated, threatened with physical violence and/or physically beaten.

All of the violence described by Judge Bechtle occurred prior to the time period of concern to us here, and, even taking into account the treatment of Suda at the Local 30 hiring hall, I make no finding that the Union continued, in the years after 1987, to consider violence to be an acceptable way of gaining its objectives.

On the other hand, Judge Bechtle found that the union officers who took office in 1987 had close ties to the exofficers who had been convicted of numerous crimes.[13] Most of the officers who were elected in 1987 remain the Union's officers.

Given the Union's past predilection for using axes, monkey wrenches, and the like on persons who did not heed the wishes of the Union's officers, given the close relationship between many of the current officers of the Union and the persons whom Judge Bechtle found to have so violently violated the law, and given the Union's message to the effect that 30B members are not to use the Local 30 halls, it is no surprise—to say the least—that 30B members have stayed away from the Local 30 halls.

VI. DAVID SUDA'S ATTEMPT TO USE A LOCAL 30 HALL

Suda began working as a roofer in 1973 and has been a journeyman member of Local 30B since 1979. In keeping with the way things are done at the Union, until June 29, 1989, whenever Suda sought a job referral through the Union's hiring halls, he used the 30B hiring halls. But on that day, in an act of stunning courage, Suda walked into the Local 30 hiring hall in Philadelphia, approached the hall's dispatcher, Thomas Hamilton, and asked to to sign the work list.

Hamilton initially refused to allow Suda to do so, telling Suda to use the 30B hall. When Suda insisted, Hamilton did allow Suda to sign the list. But Hamilton stated to Suda that whether or not Suda's name was on the list, Suda was not going to be referred out of the Local 30 hall to a job.

Hamilton did not inquire into Suda's qualifications as a commercial roofer. He did not ask Suda about his job history. Rather, the only fact that he focused on was that Suda was a member of 30B, not of Local 30.

Notwithstanding Hamilton's statements to him, Suda remained in the Local 30 hiring hall, sitting quietly.

About a half hour later Union Business Agent Thomas Lowry arrived at the hall and saw Suda, whom Lowry knew to be a 30B member and a political opponent of the union officers to whom Lowry owed allegiance. Lowry's response was to stride rapidly over to where Suda was sitting, stop within 2 or 3 feet of Suda, and in an expletive-filled shout, order Suda to get out of the Local 30 hiring hall and to ''go back to 30B where you belong.''

Suda snarled back that he had as much right to be there as anyone else and that if Lowry wanted him out of the hall Lowry would have to put him out. Suda then jumped to his feet, bumping into Lowry (because Lowry had placed himself so close to Suda). Suda's response was as filled with expletives as Lowry's had been.

A short-lived fight began. As usual in such circumstances, it is impossible to be sure exactly what happened next. But based on my evaluation of the witnesses and of the record as a whole, the likelihood is that Lowry, reacting to the bump from Suda and to Suda's words and tone of voice, socked Suda in the jaw, hard. Suda responded by tackling Lowry, and the two crashed against a wall, then onto the floor, where they continued to fight.

The other men in the room (who were there awaiting job referrals) quickly stepped in and separated Suda and Lowry. At that point, with the fight stopped, Union Vice President Conway, who had been in the Union's office (the next room) stepped over to Suda and told Suda to get out of the Local 30 hall and that job referrals were available to Suda out of the 30B hall. Conway interspersed those words with expletives.

The episode at the hall ended with Lowry and Conway, and perhaps others, pushing Suda out of the Local 30 hall.[14]

The Union presented a half-dozen reasons why it's agents' behavior toward Suda was justified.

One contention of the Union is that it was Suda who started the fight, not Lowry, so that it was appropriate to throw Suda out of the hall. But I have found that it was Lowry who started the fight. First, by rushing at Suda while loudly voicing the (unlawful) demand that Suda leave the Local 30 hiring hall. And second, by punching Suda.

Second, the Union argues that Suda's motivation for entering the Local 30 hall was to cause trouble, not to obtain a job. The Union points out, in this respect, that Suda had run for union office and that he had just learned (through a ballot-count on June 28) that he and the other candidates on his slate had lost. But Suda's motivation for asking for a job referral is irrelevant to the question of whether the Union could lawfully refuse Suda access to the Local 30 hiring hall. Considering Suda's motivation anyway, the probability is that Suda sought a job referral from the Local 30 hall not because he expected to get one; rather, his intent was to make evident

[12] In this regard, see sec. VIII, infra, regarding the power of exunion head, Steve Traitz, well after he had left union office and had been convicted of numerous felonies.

[13] See, e.g., fn. 17, infra.

[14] The Union does not deny that Lowry and Conway are its agents. The Union does claim that Hamilton was not an agent of the Union and that in Lowry's altercation with Suda, Lowry was not acting in his capacity as an agent. I do not consider the Union's contention regarding Lowry to be a serious one. As for Hamilton, the Union placed him in immediate charge of the process by which job applicants signed in. As such, the Union cannot escape responsibility for statements made by Hamilton to a job applicant, Suda, as Suda was signing in and that related to the signing in process.

(and thus amenable to proof at a hearing) what the Union's members already knew—that the Union had a policy of not permitting its 30B members to use the Local 30 hall. That motive on Suda's part, however, is hardly one that the Board should condemn.

The Union's other claims concerning the response of its agents toward Suda at the hiring hall are that Suda did not present his qualifications to Hamilton when Suda asked to sign the job referral list, that Suda is not qualified as a commercial journeyman roofer, and that Suda's job history shows him to be an unsatisfactory employee.

But neither Hamilton, nor Lowry, nor Conway asked Suda for proof of his qualifications or said that Suda would not be referred out because of his lack of knowledge of or experience at commercial roofing or referred to Suda's job history. Rather, the record is utterly clear that their sole reason for refusing Suda access to Local 30 jobs and ordering Suda to leave the hiring hall was that Suda is a member of the Union's 30B side rather than its Local 30 side and, possibly (in Lowry's case), that Suda was a political opponent of the Union's incumbent officers.

I nonetheless will consider the substance of the Union's contentions in these respects.

As far as Suda not submitting qualifications to Hamilton, as indicated earlier, the General Counsel proved that Hamilton did not ask Suda for evidence of his qualifications. And the Union has not proved that the way that Suda checked in at the hiring hall was any different from any other of the job applicants.

As for Suda's qualifications as a commercial roofer, his testimony in this proceeding, and that of several other witnesses, shows that Suda is an expert commercial roofer.

Finally, there is the matter of whether Suda's job history shows him to be an unsatisfactory employee. The record does show that, while Suda is an expert, hard working employee, he insists on doing things his way. When Suda's way is different from that of his employer, conflicts result. A consequence of that is that Suda tends not to remain in any company's employ for a long time. But that does not add up to a record that makes Suda unemployable. And the Union has not shown that it has a practice of refusing to refer out of the hiring hall employees with records comparable to Suda's.

I conclude that the Union refused to give Suda access to the Local 30 exclusive hiring hall in Philadelphia solely because Suda is a member of 30B and not of Local 30. The Union thereby violated Section 8(b)(1)(A) and (2). *Teamsters Local 293*, supra; *Teamsters Local 519*, supra; *Plumbers Local 198*, supra.

In addition, Lowry's assault on Suda separately constitutes a violation of Section 8(b)(1)(A)—whether the reason for the assault was solely because Suda was seeking a job referral out of the Local 30 hiring hall or because, in addition, Suda was a political opponent of the Union's leadership.

VII. THE UNION'S IMPOSITION OF A FINE ON SUDA

Suda's attempt to gain a job referral from the Local 30 hall, and the ensuing fight, occurred on June 29, 1989. On the following day, June 30, a political ally of Suda's, Local 30 member Michael Sullivan, sent a letter to the Union charging that the actions of Hamilton, Conway, and Lowry violated the Union's constitution and bylaws in various respects.

On July 18 Lowry filed intraunion charges against Suda, claiming that Suda attacked Lowry and that Suda's attack was ''totally unjustified and made without any cause whatsoever.''

The Union's recording secretary responded to both sets of charges by setting August 29 as the date of a hearing before the Union's trial board.

Suda did not appear at the intraunion hearing. Nor did anyone on his behalf. (At the hearing in this proceeding Suda testified that he was afraid that, had he appeared before the trial board, he would have been attacked. I credit that testimony.)

Lowry, and others on Lowry's behalf, did appear at the intraunion hearing. And on September 15 the trial board issued its decision. The trial board concluded that Suda's charges had to be dismissed, since there was no evidence to support them, and that Lowry's charges had been proven. Specifically, the trial board found that ''Brother Suda instigated the altercation with Brother Lowry and that Brother Lowry did not engage in physical assault upon Brother Suda, but rather was attacked by Brother Suda.'' The trial board went on to impose a $1000 fine on Suda.[15]

The General Counsel claims, and I agree, that by imposing that court-collectible fine on Suda, the Union violated Section 8(b)(1)(A).

My conclusion in this respect hinges on Lowry's intraunion charge. For it is clear that a union violates the Act if its agent files an intraunion charge against a fellow union member where a basis of that charge is activity by that fellow union member that is protected by the Act. E.g., *Mine Workers Local 1058 (Beth Energy)*, 299 NLRB 389 (1990), revd. on other grounds 957 F.2d 149 (4th Cir. 1992).

I will assume, for purposes of this part of the decision, that Lowry could honestly believe: that in telling Suda to leave the hiring hall, Lowry spoke in modulated, nonaggressive tones (as Lowry testified at the hearing in this proceeding); and that it was Suda, not Lowry, who struck the first blow. But it is undisputed, even by Lowry, that it was Lowry who approached Suda, not the other way around; that Lowry did so in his role as business agent; and that Lowry told Suda that Suda belonged in the 30B hiring hall, not the Local 30 hall.

Under these circumstances, it is evident—notwithstanding the pro-Lowry assumptions—that the Lowry-Suda incident occurred only because Lowry, an agent of the Union, told Suda to leave the Local 30 hiring hall, thereby violating Suda's Section 7 rights.

Thereafter Lowry filed his charge against Suda, claiming that, as noted above, Suda's attack was ''totally unjustified and made without any cause whatsoever.'' The resulting trial board ruling referred to Suda's attack on Lowry, said nothing about Lowry's violation of Suda's Section 7 rights, and imposed a hefty fine on Suda.

The net effect of the Union's action clearly was to restrain and coerce employees in the exercise of their Section 7 rights, and thus violate Section 8(b)(1)(A). Indeed, any intraunion action that purported to be an investigation into the Lowry-Suda incident and that did not explicitly notify

[15] Suda appealed to the International from the trial board's decision, paying a deposit of $250 pending disposition of the appeal. The International has not acted on Suda's appeal.

Suda that Lowry, as an agent of the Union, was wrong in telling Suda to leave the Local 30 hiring hall and that did not assure Suda of his right to use the Local 30 hiring hall for job referral purposes, would be a violation of Section 8(b)(1)(A). That is because any ruling that did not do so would inevitably restrain Suda and similarly situated employees from seeking employment through the Local 30 hiring halls.

I need not reach the question of whether, had the trial board assured Suda of his right to use the Local 30 hall, the trial board could have lawfully disciplined Suda for what it found to be Suda's assault on Lowry.

VIII. LOCAL 30'S ROLE IN ACE/TRI-COUNTY'S DISCHARGE OF SUDA[16]

A. *The Facts*

When the circumstances that are about to be discussed began, the Employer whose actions we are concerned with was named Tri-County Roofing. But Ace Roofing & Sheet Metal purchased Tri-County's assets in December 1988. Because Ace and Tri-County admit that they are alter egos of one another, there is no need to identify which acts were undertaken by Tri-County, which by Ace. I accordingly will refer to ''Ace/Tri-County.''

Ace/Tri-County has long been a party to collective-bargaining agreements with Local 30. In August 1988 Suda was hired by Ace/Tri-County, notwithstanding the fact that Suda is a 30B journeyman. Late in December the Union ordered Suda to leave the employ of Ace/Tri-County. A few days later Ace/Tri-County laid off Suda and has never recalled him. The General Counsel contends, and I agree, that the Union's demand that Suda leave Ace/Tri-County was unlawful, that it was the Union's demand that Suda leave Ace/Tri-County that caused that employer to lay off, and not recall, Suda; and that Ace/Tri-County thereby violated Section 8(a)(3) and (1).

John Traitz is an Ace/Tri-County foreman and an admitted supervisor. His wife is a part-owner of the company. As we shall see, Suda's stint at Ace/Tri-County is connected to the fact that John's brother is Steve Traitz Jr.

Until 1987 Steve was the business manager of Local 30 and, therefore, its chief executive. (See sec. IV, supra, for further reference to Steve Traitz.) But in November 1987 Steve was convicted of an array of crimes[17] and was sentenced to, inter alia, 15 years imprisonment. In December 1987 Joseph Crosley succeeded Steve as business manager. Crosley remains in that position.

In August 1988 an altercation erupted between John's side of the family and Steve's. Steve responded by telling John that John's roofing business was about to come to an end. Sure enough, notwithstanding the fact that Steve no longer held any position with the Union, and notwithstanding the fact that Steve was a convicted felon, most of Ace/Tri-County's roofing crew forthwith left Ace/Tri-County's employ. Moreover the Company was unable to obtain replacements through the Union's hiring halls.

In the 1987 election Local 30 member Michael Sullivan had unsuccessfully sought union office at the head of a slate opposed to the Joseph Crosley slate. John Traitz, who was desperate for roofing employees for his company, heard about Sullivan and asked Sullivan for help in providing Ace/Tri-County with roofers. (Henceforth my references to ''Traitz'' will be to John Traitz.) Suda had supported Sullivan. Sullivan got in touch with Suda and three other roofers, all four of whom went to work for Ace/Tri-County early in September 1988. (Suda was the only 30B journeyman of the four. The other three held Local 30 books. Ace/Tri-County knew of Suda's 30B membership.) The Union's hiring halls, of course, were not used to effect the employment.

In November 1988 Ace/Tri-County laid off the three roofers who had came to the Company when Suda did. The reason for their layoff: The three were, in Traitz' view, incompetent, and work had slowed for the Company. Suda continued in the Company's employ.

But about that same time a member of the Union filed intraunion charges against Suda. The charges focused on the fact that Suda obtained employment at Ace/Tri-County without going through Local 30's hiring hall. Suda told Traitz about the charges and also told another of the Company's supervisors, Tom Cinaglia. Traitz told Suda not to worry about the charges, that he, not the Union, did the hiring and firing at Ace/Tri-County.

A union trial board held a hearing in the matter on November 21, at which Suda testified. On December 29 the trial board issued its decision, ruling that Suda violated union requirements by, as a 30B journeyman, taking a Local 30 job and by obtaining the job other than through the Union:

> as a member of Local 30B, Brother Suda had no right to solicit or obtain his own employment on a Roofers Local 30 job. The effect of his actions was to deprive members of Roofers Local 30 of an employment opportunity.

In the future, the decision continued, Suda ''must comply with the distinction between Roofers Local 30 and Roofers Local 30B and must also comply with the provisions of the collective-bargaining agreement requiring members to use the Union's hiring hall.'' Suda was fined $200.

Ace/Tri-County laid off Suda a day or two after the trial board handed down its decision.

There is no doubt that the trial board decision was a reason for Ace/Tri-County's termination of its employment of Suda.

When Suda received the trial board's decision in the mail (on the last day or so of December or early in January), he telephoned Cinaglia (the Ace/Tri-County supervisor), told Cinaglia what the trial board had ordered, and asked Cinaglia, ''what are we going to do?'' Cinaglia responded, essentially, that: Ace/Tri-County has ''got to go by the [Union's] decision''; Suda would thus have to cease doing commercial roofing for the Company; while the Company might perhaps have a little shingling work for Suda (as noted earlier in this decision, the Union considers shingling to be

[16] The events under consideration here occurred prior to Suda's attempt to obtain employment at the Local 30 hiring hall in Philadelphia. I have presented the events out of chronological sequence in the hope that the facts presented in this order may be somewhat easier for the reader to follow than a strictly chronological version.

[17] Soliciting kickbacks, embezzlement from an employee benefit plan and from the Union's prepaid legal services fund, bribery of public officials, extortion, collecting unlawful debts for an organized crime family, mail fraud, and a RICO violation.

30B work), Suda had better go back to the 30B hiring hall for a job referral; and Cinaglia would call Suda back with more information. But neither Cinaglia nor anyone else from the company ever again contacted Suda or responded to Suda's calls to the Company.

It should be noted that Cinaglia is a member of Local 30 and is entirely familiar with the Union's practice of precluding 30B members from using the Local 30 hiring halls.

The question is whether Ace/Tri-County would have terminated Suda even had the Union not ordered Suda to leave Ace/Tri-County's employ.

John Traitz testified that he was the one who decided to lay off Suda and that he made that made that decision solely for two work-related reasons. One, said Traitz, was that the Company was entering a slow period. The other reason, Traitz testified, had to do with Suda's attitude—Suda simply would not follow certain types of orders.

I conclude that Ace/Tri-County failed to prove that it would have terminated Suda's employment even absent the Union's demand that Suda leave Ace/Tri-County.[18]

Turning first to the amount of work needed to be done at Ace/Tri-County, winter does tend to be a slow time for roofing contractors, and Ace/Tri-County's records show that the number of hours worked by its roofing employees fell to a low point the week that Suda was terminated. But the Company failed to call as a witness the only member of its management knowledgeable about what projects Ace/Tri-County had scheduled at the time Suda was terminated. Beyond that, within days after Ace/Tri-County terminated Suda, it began to hire new employees. (Ace/Tri-County and the Union had just reached a rapprochement and the Union was once again making its Local 30 hiring halls available to Ace/Tri-County.) The Company made no attempt to show that it had reason to believe that all of those new employees could handle the available work better than Suda could.

As for Suda's attitude, it is clear that, as noted earlier, Suda likes to do things his way, rather than his foreman's—that sometimes, indeed, Suda virtually insists on doing things his way. In particular, Suda repeatedly squabbled with his foremen at Ace/Tri-County over the fact that Suda refused to wear gloves even though the roofing material that Ace/Tri-County uses (a kind of asphalt) is heated to nearly 500 degrees Fahrenheit. On the other hand, Suda is a smart, knowledgeable, and experienced roofer who works hard and fast. The record specifically shows that Traitz knew that Suda ''really hustle[d]'' as a Ace/Tri-County employee. Recall, moreover, that as of the end of December 1988, Suda had been with Ace/Tri-County for about 4 months. And the record fails to show that Suda's attitude changed for the worse just before it laid him off.

Suda appealed to the Roofers Union International from the trial board's decision. On March 1, 1989, the International overturned the trial board's imposition of a fine.

[18] Regarding burden of proof issues, see *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir.), cert. denied 455 U.S. 989, approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393.

B. *Conclusion—Local 30's Role in Ace/Tri-County's Discharge of Suda*

The Union violated the Act in two obvious respects. The first was in ordering Suda to comply with an unlawful prohibition—that 30B members may not take Local 30 jobs. The second was in ordering Suda to comply with exclusive hiring hall requirements in circumstances in which the hiring hall was being operated unlawfully.

Did the Union cause Suda to lose his job with Ace/Tri-County? The Union argues that it did not, pointing to the absence of any evidence of communications by the Union to Ace/Tri-County regarding Suda. But the Union wanted Suda to leave his job with Ace/Tri-County and, in fact, ordered him to do so. Had Suda left pursuant to that order, the Board would hold the Union responsible for his departure: *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742 1985; *Sachs Electric Co.*, 248 NLRB 669 (1980). The Union can hardly be deemed less responsible where the employee, predictably concerned about the Union's order, discusses it with his employer who then fires the employee.

As for Ace/Tri-County, it terminated Suda's employment in order to avoid what its management perceived would otherwise be a conflict with the Union. Since Ace/Tri-County knew, or had reason to know, that the Union's demand that Suda leave Ace/Tri-County was an unlawful one, Ace/Tri-County thereby violated Section 8(a)(3) and (1). *Wolf Trap Foundation*, 287 NLRB 1040 (1988); *DuBose Masonry*, 279 NLRB 909 (1986).

Local 30 and Ace/Tri-County are accordingly jointly and severally liable for Ace/Tri-County's discriminatory discharge of Suda. E.g., *Wolf Trap Foundation*, supra.

IX. THE ABSENCE OF OBJECTIVE STANDARDS FOR REFERRAL FROM THE HIRING HALL

The Union deems all members of Local 30 to have the qualifications necessary to be referred from the Local 30 hiring hall. The Union also apparently deems any journeyman member of another Roofers local union (not including 30B) to be qualified. And any participant in the Local 30 apprenticeship program is eligible to referred out of the hall (to apprentice positions, of course), whether or not the participant is a member of the Union.

But the Union maintains no standards by which any other roofer might qualify for referral from any Local 30 hiring hall. There is no real dispute about that. For example, here is yet another exchange between counsel for the General Counsel and Union Vice President Conway:

> Q. Mr. Conway, it is true, is it not, that there is no mechanism by which a Local 30B member can demonstrate his or her qualifications to work on commercial jobs so as to be able to get referrals out of the Local 30 hiring hall?
>
> A. Not at the present there isn't.
>
> Q. And there hasn't ever been during the time that you have been involved?
>
> A. Not to my knowledge.

As discussed earlier, since December 1988 the Union has maintained a 5000-hour standard for acquiring journeyman

membership in the Union. But that is a standard for qualifying for membership in the Union, not for referral from Local 30 halls. That is apparent from the language of the union executive board resolution that created the 5000-hour rule:

> Regardless of previous practices and without any exceptions, 5000 hours will be required for consideration to receive a union book in both unions [i.e., Local 30 and 30B].

(As discussed in the previous parts of this decision, a 30B book entitles the holder to use only the 30B hiring halls, not the Local 30 halls.)

Local 30's president, Thomas Pedrick, did testify that the Union would use the 5000-hour rule as a way of qualifying 30B members to use the Local 30 hiring halls. But: (1) the resolution does not say that; (2) no 30B member has ever been qualified via that route for a Local 30 job; and (3) as just indicated, Conway's testimony shows that there is ''no mechanism by which a Local 30B member can demonstrate his or her qualifications to work on commercial jobs so as to be able to get referrals out of the Local 30 hiring hall.'' In any case, even taking Pedrick's testimony at face value, the standard would hardly be objective. That testimony shows that while all hours worked by members of Local 30 automatically go toward the 5000-hour requirement, the Union presumes that 30B hours involve residential work, not commercial. So any 30B members wanting access to the Local 30 halls would have carry a ''burden of proof,'' as Pedrick put it, in order to convince the Union that they had spent their roofing hours on commercial work.

In sum, it appears that the Union has no objective standards whatever for determining eligibility for referral from the Local 30 hall (except for the aforesaid membership in Local 30, membership in other Roofers locals (not including 30B), and participation in the Local 30 apprenticeship program).

This lack of objective standards constitutes a violation of Section 8(b)(1)(A) and (2):

> In considering whether an exclusive hiring hall is operated in an arbitrary manner, the absence of written rules, although not alone determinative, is evidence of the unfairness of the system . . . . But the absence of any standards, written or otherwise, normally will result in a violation of 8(b)(1)(A) and (2) of the Act for it establishes a breach of the Union's duty of fair representation which causes an employer to discriminate against referral applicants. [*Longshoremen ILA Local 1426 (Wilmington Shipping)*, 294 NLRB 1152, 1156 (1989).]

The only real issue, in this respect, is whether the matter has been litigated. The complaint does not specifically address the Union's lack of hiring hall standards in those paragraphs alleging violations of the Act.[19] And while the General Counsel did frequently refer to this lack of standards throughout the hearing, and on brief, the thrust of those references was to show that the Union discriminates against its 30B members in the operation of its Local 30 hiring halls (as I have found to be the case).

But the complaint not only alleges violations of the Act; it also proposes remedies for those violations. And one of those remedies is that the Union be required to ''maintain and operate the exclusive job referral system in a nondiscriminatory manner *based on objective standards and criteria.*'' (Emphasis added.)

In view of the repeated discussion during the hearing about the lack of criteria and standards for qualifying employees for referral from the Local 30 hiring halls, and in view of the fact that the Union was on notice that the General Counsel would urge, as a remedy, that the Board require the Union to adhere to ''objective standards and criteria,'' I conclude that the Union had ample reason and opportunity to respond to the evidence adduced by the General Counsel concerning the lack of standards and criteria.

X. OTHER MATTERS

A. *Discrimination Against Nonunion Employees*

As discussed above, the record shows that the Union considers only three categories of employees to be eligible for referral out of the Local 30 halls: Local 30 members; participants in the Local 30 apprenticeship program; and members of other Roofers local unions. The General Counsel's effort in this proceeding has been to show that that is so, and to show that, as a result, the Union has discriminated against its 30B members. But that same evidence suggests an additional conclusion: that the Union also discriminates against employees who are not members of any Roofers union. And, needless to say, if the Union has discriminated against nonunion employees in the operation of the Local 30 hiring halls, it has thereby violated Section 8(b)(1)(A) and (2) of the Act. E.g., *Longshoreman ILA Local 1423*, supra.

A paragraph of the complaint does arguably cover hiring hall discrimination by Local 30 against nonunion employees.[20] And the Union has nowhere even hinted that nonunion employees have access to the Local 30 hiring halls. But at no time in this proceeding has the General Counsel contended that the Union discriminates against nonunion employees in the Local 30 hiring halls, and the General Counsel has not adduced any evidence specifically pointing in that direction.

I accordingly do not consider myself in a position to conclude that the Union has violated the Act by discriminating against nonunion employees in the operation of the Local 30 hiring halls.

B. *Local 30's Policy of not Permitting Members of Local 30B to Work on the Same Crews with Members of Local 30*

The installation of commercial roofs is done by crews of roofers. (Commercial roofing crews range in size from 5 employees to 25, with the typical crew made up of between 7 and 12 roofers.) It is Local 30's policy not to permit members of Local 30 and 30B to work on the same crew.

[19] The only arguably relevant allegation (in par. 13 of the complaint) reads:

> Since on or about September 20, 1988, and continuing to the present time, the Respondent Union has conditioned referral of employees for employment as commercial roofers or residential roofers to employer-members of the RSMCA or RMHA, respectively, on the membership status of the employees in the Respondent Union and on arbitrary and discriminatory considerations.

[20] See the previous footnote.

Here, again, is counsel for the General Counsel questioning Conway:

> Q. So what you are saying then is, even if Local 30B men were qualified to [work for RSMCA employers], you can't see any way in which the 30B men could be mixed with the 30 crews?
>
> A. None at all.

The Union has made that policy known to employers with which the Union has contractual relationships. Here, for example, is the testimony of Gary Wolfe, of Wolfe Roofing and Sheetmetal, Inc. (Wolfe Roofing employs both Local 30 and 30B roofers.)

> Q. Now, does the company have a policy regarding mixing Local 30 and Local 30B roofers in the same work crew?
>
> A. The company does not have a policy.
>
> Q. Well, is it something that you do or do not do?
>
> A. We do not mix them.
>
> Q. And, why is that?
>
> A. We've been told not to by representatives from Local 30 and 30B.

A union policy of that nature would appear to be inherently arbitrary, invidious and discriminatory, and would appear necessarily to restrain and coerce employees in the exercise of their Section 7 rights. Again, however, the matter does not seem to me to have been litigated, and thus I am not in a position to conclude that, because of this policy, the Union has violated the Act.

XI. MISCELLANEOUS UNION DEFENSES

A. *Laches*

Both the Union and Ace/Tri-County raise, in their answers, the defense of laches, citing the 23-month period between the filing of the original unfair labor practice charge and the issuance of a complaint. But ''laches do not lie against the General Counsel for negligent delay.'' *Consolidated Casinos Corp*., 266 NLRB 988, 992 (1983). Accord: *Merril M. Williams*, 265 NLRB 506, 508 (1982).

I have considered, nonetheless, whether, for some reason, either the Union or Ace/Tri-County was prejudiced by the delay. But no facts showing this to be the case have been either pleaded or proven.

It is true that one of the Union's possible witnesses, Thomas Hamilton (the Local 30 hiring hall dispatcher), died in the interval between the filing of the charge and the hearing herein. But the Union's answer (the same one that raises the laches defense) states that Hamilton died in August 1989, just 5 months after the original unfair labor practice charge was filed and, in a case as complex as this one, before the hearing could have reasonably been held.

B. *The Supervision of the Union's Hiring Halls by a U.S. District Court*

The answers of the Union and Ace/Tri-County also raise as an affirmative defense that the ''Union's hiring hall is being operated under the supervision of the United States District Court for the Eastern District of Pennsylvania pursuant to a decree entered by that Court on May 23, 1988, in an action captioned as ''*U.S. v. Roofers Local 30*.''

The facts thus pleaded are accurate. In section V, supra, I discussed at some length the findings of Judge Bechtle in a civil RICO case against, inter alia, Local 30. In that case Judge Bechtle, by decree, imposed a ''decreeship'' upon the Union and appointed a chief court liaison officer (CCLO) to ''serve as the principal liaison officer of all provisions of the Decree.'' In March 1991 the CCLO asked the district court for an order covering the Union's hiring hall referrals. The court ordered a hearing on this proposal for May 29, 1991. (At the Union's urging, I responded to that order of the district court by postponing the hearing in this proceeding.) But that district court hearing was postponed (because the Union changed counsel), and I ordered the hearings in this proceeding to get underway. Thereafter the district court hearings were postponed indefinitely.

Unquestionably there is considerable overlap in the jurisdiction of the Board and of the district court in respect to the matters under consideration in this proceeding, and, also unquestionably, the CCLO has expressed his concern to the district court (pursuant to the decreeship) about many of the matters under consideration here. But it is not apparent to me why that calls for the dismissal of, or even a halt to, this proceeding. Further, the Respondents could have, but (so far as I have been informed) did not, raise this contention with Judge Bechtle.

CONCLUSIONS OF LAW

1. The Respondents Tri-County Roofing, Inc. and Ace Roofing & Sheet Metal, Inc., are alter egos of one another and are employers engaged in commerce within the meaning of the Act.
2. Roofers local unions 30 and 30B together constitute one labor organization.
3. The Union operates exclusive hiring halls by virtue of its collective-bargaining relationship with an association of employers, the RSMCA.
4. By informing David Suda and other members of Local 30B that, solely because they were members of 30B and not of Local 30, they were not permitted to seek job referrals from Local 30 hiring halls, the Union violated Section 8(b)(1)(A) of the Act.
5. By preventing David Suda and other employee-members of Local 30B from obtaining jobs with members of the RSMCA because such employees were members of Local 30B and not of Local 30, the Union violated Section 8(b)(1)(A) and (2) of the Act.
6. By assaulting David Suda, through its agent Thomas Lowry, because Suda sought a job referral from a Local 30 hiring hall, the Union violated Section 8(a)(1)(A) of the Act.
7. By imposing a fine on David Suda in circumstances in which the imposition of that fine coerced and restrained Suda and other members of 30B in respect to seeking job referrals at Local 30 hiring halls, the Union violated Section 8(b)(1)(A) of the Act.
8. By causing the termination of Suda's employment at Ace/Tri-County because Suda was not a member of Local 30 and because Suda did not obtain such employment via Local 30 exclusive hiring halls, which hiring halls were operated in an unlawful manner, the Union violated Section 8(b)(1)(A) and (2).

9. By terminating Suda's employment because of the Union's demand that Suda leave Ace/Tri-County in circumstances in which Ace/Tri-County knew, or had reason to know, that the Union's demand coerced and restrained Suda in the exercise of his Section 7 rights, Ace/Tri-County violated Section 8(a)(3) and (1) of the Act.

10. Each of the foregoing unfair labor practices affected commerce.

Remedying Local 30's Discriminatory Exclusion of Eligible 30B Members from the Local 30 Hiring Halls

The Union's operation of its Local 30 hiring halls has violated the Act in blatant and wholesale fashion. This part of the decision deals with the difficult questions of how to remedy past wrongs in this respect and what steps would have the best chance of ensuring that such violations cease.

A. *Specifying Which 30B Members Should be Deemed Qualified for Referral from the Local 30 Hiring Halls*

The General Counsel urges that the Board order an end to separate hiring halls for Local 30 members and 30B members. Or, in the General Counsel's words, the Board should require the Union to ''merge the work referral lists under the RSMCA and RMHA contracts and maintain only one referral list for all applicants seeking referrals for employment opportunities.''

There are two significant problems with the General Counsel's proposal.

One is that there undoubtedly are some 30B members, perhaps many, who are not competent commercial roofers.

A second is that, as far as the record in this proceeding shows, the maintenance of a system providing for two distinct rates of remuneration (one for jobs out of the Local 30 halls, another for jobs out of the 30B halls) has served useful purposes. It is not wholly clear that such a system could be maintained if the Local 30 and 30B lists were merged. In particular the 30/30B system provides the benefits of hiring halls and a pool of skilled labor to employers whose business is such that they might ordinarily have neither. (I refer to roofing contractors operating in areas in which non-union competition is strong.) Similarly, an end to the 30/30B system might mean a net decline in the income of the Union's membership. I note, in these regards, that the record contains no useful testimony about the possible effects of a merger of the Local 30 and 30B lists on the shape and health of the roofing industry in the geographic area in which the Union operates.[21]

I nonetheless am adopting the General Counsel's proposal because so many considerations argue in its favor.

First, the extraordinary facts of this case demand equally extraordinary remedial action by the Board. It is clear that drastic steps are needed to remedy the many years of hiring hall discrimination practiced by the Union, particularly in view of the Union's history of violence.

Second, in establishing nondiscriminatory standards for qualifying employees for referral from its hiring halls (as the recommended order requires the Union to do), the Union can, and undoubtedly will, do so in a way that categorizes its members for job referral purposes. Thus the problem of referring to RSMCA members roofers who are incompetent to handle commercial roofing tasks will cease just as soon as the Union sees its way to adopting such nondiscriminatory standards.

Third, other unions have been able to establish two or more distinct rates of remuneration (depending upon the type of work and/or the extent of nonunion competition), without having to resort to a system that discriminates in wholesale fashion against many of their own members.

Fourth, the Union's own past actions make its predictions of doom less than altogether persuasive. In particular: (1) the Union has permitted some wholly inexperienced individuals to become journeyman members of Local 30 and thus eligible for referral from its Local 30 hiring halls; and (2) the Union has itself encouraged both RMHA and RSMCA employers to utilize 30B members for commercial roofing work (in circumstances in which nonunion competition precludes the use of Local 30 pay rates).

Fifth, roofing contractors needing 30B roofers for commercial work routinely obtain these roofers via the 30B hiring halls. Nothing in the record indicates that, even though some 30B members may have no commercial experience, any significant problems thereby arise.

Sixth, while much commercial roofing work requires considerable skill and experience, there is also a substantial amount of unskilled and semiskilled work to do on any commercial roofing project. (Pushing wheelbarrows, cleaning, screwing down pads of insulation, and the like.) Should the merged hiring hall lists result in an employer getting a roofer who is inexperienced in commercial work, to some extent the employer can deal with it by assigning those kinds of tasks to that roofer.

Seventh, some residential roofing experience is transferable to commercial roofing work.

Eighth, RSMCA members routinely: (1) ask for specific employees when they call a Local 30 hiring hall; (2) advise the hiring halls that they will not accept certain Local 30 members; and (3) promptly fire any members of Local 30 the employers determine to be incompetent or otherwise incompatible with their work forces. Each of these procedures ought to enable employers to avoid hardship stemming from unqualified employees being eligible for referral from the Union's hiring halls as a result of a merger of the Local 30 and 30B lists.[22]

Ninth, more than half of the work of the 30B membership is on commercial roofs. Thus it is not as though the General Counsel is proposing to merge a roster of essentially residential roofers with one of commercial roofers.

And 10th, throughout the many months of this proceeding the Union could have put forth a method for consideration

[21] The RSMCA and the RMHA have proposed a plan to Judge Bechtle pursuant to apprentice which ''all current voting members of Local 30 and 30B shall be deemed qualified journeyman roofers'' (G.C. Exh. 61.) But that provision is part of a package that includes terms that the General Counsel does not claim that the Board should, or even could, order.

[22] A possible cause for concern, in fact, is that RSMCA members often obtain employees from the Local 30 hiring halls by having their foremen select from among those employees awaiting job referrals at the halls. Particularly since such foremen are often members of Local 30, that procedure could result in a continuation of the discriminatory treatment of 30B members even after merger of the Local 30 and 30B lists.

by the Board by which its Local 30 hiring halls could be operated nondiscriminatorily and which would obviate the General Counsel's entirely appropriate concerns. In fact the Union was invited to do so. But except for Pedrick's obviously discriminatory 5000-hour proposal,[23] the Union merely dragged its heels.

B. *Other Forward-Looking Affirmative Remedies Regarding Operation of the Local 30 Hiring Halls*

The General Counsel proposes that the Union be required to maintain and operate its exclusive hiring hall system in a nondiscriminatory manner based on objective criteria and standards. In view of the Union's violation of the Act in this respect, that requirement is plainly an appropriate one. To it I will add the requirement that such criteria and standards be written and that upon their adoption they be posted in all of the Union's Local 30 hiring halls and that copies be mailed to the Union's 30B members and provided to the Regional Director for Region 4 and to the chief court liaison officer appointed pursuant to the decreeship discussed in section XI,B, supra. (I am recommending that the hiring hall standards and criteria be mailed to the 30B members because of my concern that the Union's hiring hall discrimination against its 30B members has become so institutionalized that special steps are needed to make it clear to those members that things have changed. I am also concerned that some 30B members may be reluctant to visit any union facilities.)

The Union also will be required to:

(1) Maintain written records of its referrals from its Local 30 hiring halls for 2 years, with such records containing information sufficient to disclose the basis of referrals. The recommended order requires the Union to make documents available to the Regional Director and to the chief court liaison officer on the request of either.

(2) Submit four quarterly reports to the Regional Director, due 10 days after the close of each calendar quarter subsequent to the issuance of this decision, with copies to the chief court liaison officer, concerning referrals of 30B members to employers that are members of the RSMCA; such reports shall include the dates and numbers of applications made by 30B members in Local 30 hiring halls.

(3) Place the referral lists in conspicuous places within the Local 30 hiring halls for easy access and inspection by all applicants seeking referrals for employment opportunities.

C. *Backpay*

The likelihood is that, for Suda and other 30B members, the Union's many years of hiring hall discrimination resulted in losses in pay. The General Counsel proposes, in this regard, that the back pay period be limited to the period beginning September 20, 1988, which is 6 months prior to the filing of the first unfair labor practice charge in this proceeding. That, of course, is appropriate. The General Counsel also proposes that the Board require the Union to make whole Suda and all other employee-members of 30B that have experience in performing commercial roofing work for the losses suffered by reason of discrimination against them.[24] But if the General Counsel is thereby proposing that, for back pay purposes, any 30B member with commercial roofing experience be deemed to be eligible for referral from Local 30 halls, that standard is too broad. On the other hand, if the General Counsel means to leave to the compliance stage the determination of eligibility for referral, that would seem to burden that stage unnecessarily.

I thus recommend that, for the period beginning September 20, 1988, the Union be required to make whole David Suda and the below-listed other employee-members of Local 30B for the loss of earnings and other benefits they may have suffered by reason of the Union's discriminatory operation of its Local 30 hiring halls. Such loss of earnings shall be computed on a quarterly basis, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Any employee-member of Local 30B having, at the time of the claimed loss:

> At least 5,000 hours of roofing experience and who graduated from the 30B apprentice program; or
>
> A total of at least 5,000 hours of roofing experience with one or more of the following companies:
>
> - Delta Roofing
> - McGarvey & Sons
> - McMullen Roofing
> - Reilley Roofing
> - Rise Roofing
> - R. J. Associates
> - Rys Roofing Company
> - U.S. Roofing/J.M Contractors
> - Wolfe Roofing & Sheetmetal, Inc.
> - Any member of the RSMCA
> - Any other employer whose commercial roofing work constitutes more than half of its total roofing work, measured in employee-hours; or
>
> At least 5,000 hours of commercial roofing experience.

My reason for recommending these criteria are—

Graduation and 5000 hours from the 30B apprenticeship program: Reference to the 30B apprenticeship program reflects the twin facts that the program was designed to produce commercial roofers and that almost all of the participants in that program were employed by companies engaged in commercial roofing work. The 5000-hour requirement reflects the Union's own standard and evidence that, apprenticeship or no, on-the-job experience is important in becoming a competent roofer.

Experience of 5000 hours with the listed employers: The record shows that at least the majority of the roofing work of all of the named employers is commercial work. And, of course, virtually all the roofing work of the RSMCA members is commercial. It is unlikely that an employee could have 5000-hours experience with such companies and not have the skills of a commercial journeyman roofer. In addition, there are undoubtedly roofing companies other than

[23] See sec. IX, supra.

[24] The General Counsel argues that backpay should be accorded not only 30B journeymen but, in addition, 30B helpers for whom field dues have been deducted. But the record fails to prove that such 30B helpers would have been entitled to seek job referrals from the Local 30 hiring halls even had the Union not discriminated against its 30B side. I accordingly limit backpay to those 30B journeymen described below.

those named whose work is mostly commercial. The recommended criteria permit an investigation, at the compliance stage, into the identities of such companies.

Commercial roofing experience of 5000 hours. The record is clear that 30B members do a substantial amount of commercial roofing work for companies whose business is at least 50 percent residential—John P. Donnelly Roofing Company, for instance.[25] There may be 30B members who are able to show that they performed 5000 hours of commercial roofing work for such companies. Even under Pedrick's proposed standard, such employees would qualify as journeyman commercial roofers.

Other Remedial Provisions

A. *Suda's Discharge From Ace/Tri-County*

Respondent Ace/Tri-County, having unlawfully terminated the employment of its employee David Suda, must offer him reinstatement. Ace/Tri-County and the Union shall jointly and severally make Suda whole for any loss of earnings and other benefits he suffered by reason of Ace/Tri-County's termination of his employment. Such losses shall be computed on a quarterly basis from the date of the termination of his employment to the date of proper offer of reinstatement by Ace/Tri-County, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., supra, plus interest as computed in *New Horizons for the Retarded*, supra.

B. *The Need for a Broad Form of Remedial Order*

The recommended order requires that the Union cease and desist from all of the various violations of the Act I have concluded that it committed. The issue here is whether the Union should further be ordered to cease and desist from violating the Act ''in any other manner'' rather than the usual ''in any like or related manner.''

Because the Union has continued to show itself to be unwilling to comply with the requirements of the Act, because the facts discussed in this decision show that the Union has a proclivity to violate the Act,[26] and because theUnion ''has engaged in such egregious . . . misconduct as to demonstrate a general disregard'' for its 30B members' ''fundamental statutory rights,'' I have concluded that a broad form of order is necessary and appropriate. *Hickmott Foods*, 242 NLRB 1357 (1979); see also *Boilermakers Local 374 (Construction Engineering) v. NLRB*, 284 NLRB 1382 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988).

[Recommended Order omitted from publication.]

[25] See sec. III,D, supra.

[26] See *Roofing, Metal & Heating Associates*, 304 NLRB 266 (1992), for yet another instance of a violation of the Act by the Union.